

# Social Policy and International Commitments:

Rethinking National Action Plans on Violence against Women

Eren Cervantes-Altamirano  
4-1-2014

## INTRODUCTION

In October 2013, the Canadian Network of Women's Shelters and Transition Houses released *The Case for a National Action Plan on Violence Against Women*. The document provides a human rights approach to policy-making around the issue of gender-based violence in Canada. The plan was presented in a recent talk in Ottawa, where the proponents explained that the plan is meant to provide Canada with a nation-wide strategy to tackle the issue of violence against women.<sup>1</sup> The proposal arises from a recent trend to “neutralize” the issue of gender-based violence by characterizing it as “family violence.” This change in rhetoric, the panelists argued, denies the fact that most violence is perpetrated by males against women, and that women face systemic disadvantages in dealing with violence and recovering from it.<sup>2</sup> To contest this shift, the plan builds on the latest recommendations made to Canada by fellow United Nations members regarding gender equality efforts and the situation of Indigenous women<sup>3</sup> in the country.

In 2013 Canada underwent its latest United Nations Universal Periodic Review. The process involves a revision of human rights records of all member states. The member state undergoing the review has the opportunity to submit a report of improvements to human rights since the last revision, and fellow member states provide recommendations.<sup>4</sup> During the last process, different states highlighted Canada's lack of improvement in the area of violence against Indigenous women. Canada declined the recommendations arguing that current mechanisms in place are already addressing the situation.<sup>5</sup>

---

<sup>1</sup> Daly, F., Msosa, Y., Burns, L. and Johnson, H. Lunchtime Discussion on the National Action Plan on Violence Against Women. (March 12, 2014). Octopus Books, Ottawa.

<sup>2</sup> Ibid.

<sup>3</sup> The term “Indigenous” is used to describe First Nations, Métis and Inuit women. Yet, it is important to recognize that there is no universal term agreed upon by all groups.

<sup>4</sup> United Nations Human Rights. “Universal Periodic Review.” (n.d.). Retrieved from <http://www.ohchr.org/en/hrbodies/upr/pages/uprmain.aspx>

<sup>5</sup> Draft Report of the Working Group, 2013, 6.

The Federal Government's position on violence against Indigenous women caused outrage among NGOs in Canada and abroad,<sup>6</sup> particularly because recent research by Amnesty International<sup>7</sup> and Human Rights Watch<sup>8</sup> demonstrates that violence against Indigenous women prevails. Statistics show that Indigenous women living in Canada are five times more likely to suffer violence than their non-Indigenous counterparts.<sup>9</sup> Moreover, the Native Women's Association of Canada (NWAC) argues that no reliable statistics exist in Canada about Indigenous women's involvement in the sex trade or about trafficking of Indigenous girls and women.<sup>10</sup> NWAC points out that between 1991 and 2004 over 150 Indigenous women in the sex trade were killed and almost half the murders remain unsolved.<sup>11</sup> Likewise, current provincial and Federal policies do not adequately address sexual violence against Indigenous women and girls since they are often further criminalized when they seek support from law enforcement and the courts.<sup>12</sup>

This paper focuses on sexual violence, as opposed to violence in general, because cases of rape by strangers, marital rape and trafficking have proven to be a challenging issue in terms of definition and legal protections. Although sexual violence features in National Action Plans and recommended policies, it is considered to be illegal in Canada, and it has been recognized by the United Nations as a form of discrimination, what exactly constitutes rape and trafficking? And

---

<sup>6</sup> M. Blanchfield. (2013, September 19). Canada Rejects UN Call for Review of Violence Against Aboriginal Women. *Globe and Mail*. Retrieved from <http://www.theglobeandmail.com/news/national/canada-to-reject-un-panels-call-for-review-of-violence-on-aboriginal-women/article14406434/>

<sup>7</sup> Amnesty International. "Parliamentary Committee report fails Aboriginal women and girls and all Canadians, 2014, n.d.. Retrieved from <http://www.amnesty.ca/news/news-releases/parliamentary-committee-report-fails-aboriginal-women-and-girls-and-all-canadians>

<sup>8</sup> M. Rhoad, & Human Rights Watch (Organization). (2013). *Those who take us away: abusive policing and failures in protection of indigenous women and girls in Northern British Columbia, Canada*. [New York, N.Y.]: Human Rights Watch.

<sup>9</sup> Assembly of First Nations, "A National Action Plan to End Violence Against Indigenous Women and Girls," (2013, July): 2.

<sup>10</sup> NWAC. (2011). "Fact Sheet: Violence against Aboriginal Women," p. 5.

<sup>11</sup> Ibid, p.5.

<sup>12</sup> Ibid, 47-49.

how it should be dealt with? are contentious issues. Sexual violence is prominent in Indigenous women's experiences around the world<sup>13</sup> and it is an example of gender-based and race-based violence that intersects with economic development, education and social status.

Addressing sexual violence against Indigenous women requires a holistic approach targeting poverty, access to education, gender-based violence and systemic discrimination. Given the political environment, the 2015 election provides an opportunity to bring up the issue of gender-based violence to the public sphere. NGOs like the Canadian Network of Women's Shelters and Transition Houses (CNWSTH) as well as the Assembly of First Nations (AFN) continue to advocate for a National Action Plan that targets different areas of social policy. The question left to answer is whether a National Action Plan, as a holistic approach to policy, can transform the experience of Indigenous women in regards to sexual violence?

This paper will proceed as follows. First, it will provide an overview of the drivers leading the policy debate on the issue of sexual violence against Indigenous women. Then, it will review the literature on gender-based and sexual violence. Next, this piece will discuss the elements of racialized violence that permeate the experience of Indigenous women. Finally, it will argue that, as is, the proposed National Action Plans face many policy challenges and will not necessarily improve the conditions of Indigenous women and girls. To close, I will provide a set of preliminary recommendations to reconsider the proposed National Action Plans.

#### **POLICY DRIVERS: NATIONAL ADVOCACY, INTERNATIONAL RECOMMENDATIONS AND PUBLIC "SHAMING."**

---

<sup>13</sup> Amnesty International. "Violence Against Indigenous Women." 2007. Retrieved from <https://www.amnesty.org/en/campaigns/stop-violence-against-women/issues/implementation-existing-laws/indigenous-women>

Canada is often highly regarded in the international arena. It ranks number 11 in the Human Development Index;<sup>14</sup> it is deemed as a “significant financial contributor” and a “steadfast partner” by the World Bank;<sup>15</sup> and it is well-regarded as a “free country” by the Freedom House,<sup>16</sup> despite the fact that Indigenous populations are often discriminated against and Indigenous women are more prone to violence than any other women in the country.<sup>17</sup>

Canada has an important colonial past that continues to define the lives of 4.3% of the population living in Canada, which self-identifies as either First Nations, Métis or Inuit.<sup>18</sup> Although Canada ranks high in many development and rights indexes, its Indigenous population is still dealing with the consequences of centuries of colonization. Some of the issues resulting from the colonial past include poverty, violence, unhealthy relationships and substance abuse.<sup>19</sup> As described by Escobar in the case of Indigenous populations in the Third World,<sup>20</sup> Indigenous communities in Canada have suffered numerous administrative and policy interventions that range

<sup>14</sup> “Human Development Index,” *United Nations Development Programme*, last modified 2013

<http://hdrstats.undp.org/en/countries/profiles/CAN.html>

<sup>15</sup> “Canada Overview,” *The World Bank*, last modified June 4 of 2013,

<http://www.worldbank.org/en/country/canada/overview>

<sup>16</sup> “Freedom in the World, Canada,” *Freedom House*, last modified 2013,

<http://www.freedomhouse.org/report/freedom-world/2013/canada>

<sup>17</sup> “Fact Sheet: Violence Against Aboriginal Women,” *Native Women’s Association of Canada*, last updated 2007,

[http://www.google.ca/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CDIQFjAA&url=http%3A%2F%2Fwww.nwac.ca%2Ffiles%2Fdownload%2Fdownload%2FNWAC\\_3E\\_Toolkit\\_e\\_0.pdf&ei=uoybUoasNtLuoASI4YDoCg&usg=AFQjCNFDZsytVr1Ldr72r14jePiUJ4jGDA&sig2=8Y\\_LAKeJ0adtrv2Vqdd4rQ&bvm=bv.57155469,d.cGU](http://www.google.ca/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CDIQFjAA&url=http%3A%2F%2Fwww.nwac.ca%2Ffiles%2Fdownload%2Fdownload%2FNWAC_3E_Toolkit_e_0.pdf&ei=uoybUoasNtLuoASI4YDoCg&usg=AFQjCNFDZsytVr1Ldr72r14jePiUJ4jGDA&sig2=8Y_LAKeJ0adtrv2Vqdd4rQ&bvm=bv.57155469,d.cGU)

<sup>18</sup> “2011 National Household Survey: Aboriginal Peoples in Canada: First Nations People, Métis and Inuit”

*Statistics Canada*, last updated on May 2013, <http://www.statcan.gc.ca/daily-quotidien/130508/dq130508a-eng.htm>

<sup>19</sup> “Aboriginal Issues,” *Centre for Social Justice*, last updated in 2013,

<http://www.socialjustice.org/index.php?page=aboriginal-issues>

<sup>20</sup> Arturo Escobar. *Encountering Development*. (Princeton: Princeton University Press, 1995, 8.

from policy discussions on their status or lack thereof<sup>21</sup> and blood quantum regulations<sup>22</sup> to the Indian Residential School system for which Prime Minister Steven Harper apologized in 2008.<sup>23</sup>

In recent years the situation of Indigenous peoples, and particularly women, have attracted the attention of NGOs like Amnesty International and Human Rights Watch. What is more, since 2009 the situation of Indigenous women in Canada has proven important for the United Nations. Arguably, much of the attention results not only from Canada's international reputation as a peace-keeping country and as a defender of human rights, but from Canada's 32-year old commitment to the Committee on the Elimination of All forms of Discrimination against Women.

In 1981 Canada signed the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). CEDAW requires member countries to adopt measures to end discrimination against women,<sup>24</sup> including the prevalence of sexual violence.<sup>25</sup> Canada reaffirmed these commitments by signing the *Beijing Action Platform*<sup>26</sup> in 1995 and provided accession in 2002.<sup>27</sup> The *Action Plan* provides an optional protocol that supports CEDAW's mandate through policies and legal means within the national context.<sup>28</sup>

By ratifying CEDAW and the Beijing Action Platform, Canada agreed to provide a framework under which women's rights could thrive and the prevalence of sexual violence would

---

<sup>21</sup> "Indian Status," *Aboriginal Affairs and Northern Development Canada*, last updated on May 2013, <http://www.aadnc-aandc.gc.ca/eng/1100100032374/1100100032378>

<sup>22</sup> The Confederacy of Mainland Mi'kmaq, "The Challenge of Identity: Addressing the complex question of Mi'kmaq citizenship," in *Kekina'muek: Learning about the Mi'kmaq in Nova Scotia*, last updated in 2007, <http://www.cmmns.com/Kekinamuek.php>

<sup>23</sup> The apology came 18 years after the last residential school was closed in 1996. "Prime Minister Harper offers full apology on behalf of Canadians for the Indian Residential School System," *Aboriginal Affairs and Northern Development*, last updated on September 2010, <http://www.aadnc-aandc.gc.ca/eng/1100100015644/1100100015649>

<sup>24</sup> CEDAW, n.d, n.p. Retrieved from <http://www.un.org/womenwatch/daw/cedaw/>

<sup>25</sup> CEDAW, "General Recommendations," n.d. Retrieved from <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>

<sup>26</sup> The Action Platform is an optional protocol document that outlines guidelines towards enhancing the status of women in society. Retrieved from [http://www.iwraw-ap.org/protocol/list\\_signatories.htm](http://www.iwraw-ap.org/protocol/list_signatories.htm)

<sup>27</sup> IWRAW, n.d., n.p. Retrieved from <http://www.iwraw-ap.org/>

<sup>28</sup> Ibid, n.p.

decline. It is important to note, that Canada's commitment to gender equality has not been futile. Both feminist advocacy and the government's willingness to support their causes created the right environment to discuss gender equality and related rights. Feminist advocacy in the 1970s led to the amendment of the Canadian Criminal Code. It was in the mid-1970s and early 1980s that the Parliament responded to sexual violence through Bill C-49, which prohibited courts to inquire into the victim's previous sexual history to support inferences of "consent" or "by force" in rape cases.<sup>29</sup> Hodgson and Kelley describe the difficulties of "coding" sexual violence into law because of gendered and racial assumptions built into the legal and legislative systems,

"The criminal justice system, as an expression and representative of dominant cultural ideologies, is sexist in nature. The dominant cultural expression of white, male, middle-class, Christian, middle-aged, educated, heterosexual and patriarchal characteristics has traditionally responded to gender crimes with inadequate laws, policies, procedures and emphasis."<sup>30</sup>

Despite this, feminist advocacy and Canada's commitment to international projects have resulted in gains for many women in the country. The problem lies in that access to law and services is not equally distributed across women, and marginalized populations are particularly disadvantaged. These inequalities between Indigenous and non-Indigenous women have been a human rights concern to the United Nations. In 2009 the United Nations' Office of the High Commissioner in Human Rights called Canada to address gendered violence particularly against Indigenous women.<sup>31</sup> The UN's High Commissioner for Human Rights provides governments

---

<sup>29</sup> Hodgson, James F., and Debra S. Kelley, ed. 2012. *Sexual Violence: Policies, Practices, and Challenges in the United States and Canada*. Westport, Connecticut London: Praeger, p.105.

<sup>30</sup> Ibid, 5.

<sup>31</sup> "Summary Prepared by the Office of the High Commissioner," 2009, p. 4

with technical expertise to implement international human rights in a given country.<sup>32</sup> The report, resulting from the UN's human rights Universal Periodic Review, pointed out that even though spousal violence among Indigenous families had declined in the past years, Indigenous women still experienced higher levels of sexual violence and chances of suffering a violent death.<sup>33</sup> At that point in time, the Federal Government decided to address the issue by partnering with NWAC and the *Sisters in Spirit Initiative* to raise awareness about racialized and sexualized violence against Aboriginal women.<sup>34</sup> However, the High Commissioner argued that Canada needed a national wide strategy to tackle the issue.<sup>35</sup>

The recommendations outlined in the Universal Periodic Review report were revised in 2011 by the Standing Committee on the Status of Women. Their research shows that sexual violence against Indigenous women is not limited to the family sphere as it was commonly assumed; instead, the data showed that Indigenous women are as likely to experience violence in the private sphere as they are from a stranger or an acquaintance.<sup>36</sup> The Committee concluded that diminishing all types of violence against Indigenous women requires a holistic policy approach that includes addressing poverty and institutionalized racism.<sup>37</sup>

Nonetheless, in early 2013, during the Universal Periodic Review of that year, China, the U.S., Côte d'Ivoire, Cuba, Estonia and Finland<sup>38</sup> pointed out Canada's problems in addressing violence against Indigenous women. Canada responded by assuring the review board that the

---

<sup>32</sup> United Nations Human Rights. "About us." n.d. Retrieved from <http://www.ohchr.org/EN/AboutUs/Pages/WhatWeDo.aspx>

<sup>33</sup> "National Report," 2009, p. 16-17

<sup>34</sup> Ibid, p. 17

<sup>35</sup> "Summary Prepared by the Office of the High Commissioner," 2009, p. 4

<sup>36</sup> Standing Committee on the Status of Women. *Interim Report Call Into the Night: An Overview of the Violence Against Aboriginal Women*. (Committee Report No. 14). 2011. n.p. Retrieved from <http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=5056509&Language=E&Mode=1&Parl=40&Ses=3>

<sup>37</sup> Ibid, n.p.

<sup>38</sup> Draft Report of the Working Group, 2013, 4-5

Federal Government had taken measures to address the situation through increased funding in law enforcement initiatives and policy and legislative measures.<sup>39</sup> After the review was finalized, Canada rejected the committee's call to develop a national plan to implement the *Declaration on the Rights of Indigenous Peoples*.<sup>40</sup> Similarly, Canada rejected the recommendation to adopt a national-wide strategy to end violence against Indigenous women.<sup>41</sup>

Following the Universal Periodic review of 2013, the Assembly of First Nations (AFN) and the Canadian Network of Shelters and Transition Houses (CNSTH) have attempted to advocate for the need to implement a National Action Plan. Whereas CNSTH calls for a general approach to gender-based violence that is culturally-sensitive,<sup>42</sup> AFN favours a National Action Plan that is not only culturally sensitive, but that encompasses Indigenous knowledge, approaches and experiences.<sup>43</sup> Thus, moving forward towards the 2015 electoral process, Canadian and Indigenous NGOs, as well as international organizations, are driving the way towards policy change.

#### SEXUAL VIOLENCE: DEFINITIONS, CHALLENGES AND TARGETS.

Defining sexual violence has been a contentious issue since the term's first appearances in the public and political agendas. An important part of the challenges is that sexual violence is often treated as a "private" matter. It can also be "invisible," especially if it is perpetrated by an acquaintance or family member. Furthermore, discussing the term requires deconstructing gendered assumptions built into legal systems. In order to create effective policy, definitions

---

<sup>39</sup> "Draft Report of the Working Group," p. 6.

<sup>40</sup> Human Rights Council, p. 5-6

<sup>41</sup> Ibid, p.6

<sup>42</sup> Canadian Network of Shelter and Transition Houses. "National Action Plan on Violence Against Women." 2013, 4-8.

<sup>43</sup> Assembly of First Nations. "National Action Plan for Indigenous Women and Girls." 2013, p. 21-22.

should be clear and not open to interpretation. Yet, after years of feminist activism and policy work, sexual violence, and the best ways to deal with it, continue to be redefined.

Edward Renner addresses sexual violence as a “social problem with legal aspects.”<sup>44</sup> For Renner, sexual violence does not bear weight in the public sphere until its instances are pervasive enough that they become political.<sup>45</sup> Key to Renner’s argument is the politicization of the problem. Most of the definitions provided in this section bear political weight whether explicitly or implicitly; thus, the complexity and the importance of defining sexual violence carefully.

Heberle and Grace indicate that embedded in the notion of sexual violence are issues of “force” and “consent.”<sup>46</sup> How those terms are defined permeates how “victims” and “perpetrators” are depicted in the social imagination and in within the state’s institutions.<sup>47</sup> They further argue that sexual violence is much more than the mere act of rape (forceful oral, vaginal or anal penetration through the penis or other items); it also includes other forms of molestation and verbal harassment.<sup>48</sup> While Haberle and Grace propose a more inclusive definition, there are challenges with measuring the variables proposed. To date, statistics of sexual violence focus primarily on rape or attempted rape. It is likely that by using the authors’ definition, statistics would show a considerably higher incidence of sexual violence. Nonetheless, questions about the measurability of verbal harassment must be addressed. Similarly, thinking pragmatically about this definition would require further clarification on the types of acts that constitute “molestation,” and how verbal harassment transforms into sexual violence.

---

<sup>44</sup>Edward Renner, “Reconceptualizing Sexual Assault from an Intractable Social Problem to a Manageable Process of Social Change,” in Hodgson, James F., and Debra S. Kelley, ed. 2002. *Sexual Violence: Policies, Practices, and Challenges in the United States and Canada*. Westport, Connecticut London: Praeger, p. 136

<sup>45</sup> Ibid, p.136.

<sup>46</sup> Haberle and Grace, “Sexual Violence: Policies, Practices and Challenges,” in Haberle, Renée J., and Victoria Grace, eds. *Theorizing Sexual Violence*. New York: Routledge, 2009, p.xii.

<sup>47</sup> Ibid, p. 64.

<sup>48</sup> Ibid, p.15.

Building on the idea of “molestation,” Sweetman points out that sexual violence is a complex social phenomenon that develops within patriarchal social systems.<sup>49</sup> Sweetman argues that sexual violence is a “mechanism of control” implemented through the patriarchy to replicate unequal relations between men and women.<sup>50</sup> Haberle further acknowledges that feminists<sup>51</sup> have often defined sexual violence as “...an effect of relations of dominance and submission between men and women.”<sup>52</sup> Amnesty International suggests that sexual violence is a function of discrimination, aiming to prevent women from participating fully in society.<sup>53</sup> Such a view, of sexual violence as a proactive act of discrimination, aligns with CEDAW’s vision.<sup>54</sup> Some authors<sup>55</sup> emphasize sexual violence as a mechanism of oppression against women looking to preserve gendered relations of domination and power.

However, there are discrepancies that must be outlined. First, definitions are important because, as we have seen in recent years, sexual violence is not necessarily a problem that impacts women only. Children of both sexes and men can be targets too. In addition, the definition of sexual violence needs to be broad enough to capture the fact that this type of violence manifests not only in the private sphere, but also in the public one. Hitherto, measurability for statistical purposes is essential for theorizing about sexual violence. In addition, it is vital to recognize that sexual violence affects women who bear diverse identities differently.

Kristin Bumiller takes issue with generalizations made about sexual violence that neglect the intersectionality of identity because such a claim points to a “fascination with sexual crime”

---

<sup>49</sup> Sweetman, Caroline, ed. *Violence Against Women*, 1998. Oxfam Focus on Gender. Oxford: Oxfam, 3.

<sup>50</sup> Ibid, p.3.

<sup>51</sup> Haberle and Grace just refer to “feminists” as a monolithic group of women advocating for the legal protection of women in cases of sexual violence. Their analysis does not acknowledge the multiplicity of feminisms existent within the developed and developing worlds.

<sup>52</sup> Haberle and Grace, p. 125.

<sup>53</sup> Amnesty International, “It’s in Our Hands: Stop Violence Against Women,” 2004. NY: New York, p.5.

<sup>54</sup> General Recommendations, n.d.

<sup>55</sup> Haberle and Grace, 2009, Sweetman, 1999, Murphy, 2011, Amnesty International, 2004, etc.

rather than an actual theorization of the phenomenon.<sup>56</sup> Further, Bumiller argues that sexual violence, in its short existence in the policy agenda since the feminist movements of the 1970s, has been redefined multiple times. Today, she points out, sexual violence is defined as a “health crisis” that needs to be controlled, contained and managed by the state.<sup>57</sup>

Nicola Gavey refers to Sharon Marcus’ research to question the power dynamics attributed to sexual violence.<sup>58</sup> In this regard, Marcus sees the possibility of a shift in power relations, with limited state intervention, by teaching women to “resist” sexual violence. She says that strategies to address sexual violence should “...enable women to sabotage men’s power to rape, which will empower women to take the ability to rape completely out of men’s hands.”<sup>59</sup> In defining sexual violence as something that can be challenged and stopped through resistance, Marcus seeks to return women the agency that has been negated to them by categorizing them as “victims.”

However, Gavey recognizes that the approach, as appealing as it may be, is dangerous in that it expects victims of sexual violence to react in certain ways that are not realistic in all cases.<sup>60</sup> Moreover, Marcus’ view assumes that forceful penetration is the issue; thus, by teaching women how to resist they are able to challenge violence. However, this is problematic if we think of examples such as the military. Women who are trained to resist and perpetrate violence against other women and men still face high levels of sexual violence within their line of work, which is often perpetrated by their coworkers.

Taking into consideration these authors definitions on sexual violence, a notable omission in few of the definitions is the experience of sexual violence given the intersection of identities.

---

<sup>56</sup> Bumiller, Kristin. *In An Abusive State: How Neoliberalism Appropriated the Feminist Movement Against Sexual Violence*. Durham and London: Duke University Press, 2008, p. 21.

<sup>57</sup> Ibid, p.5.

<sup>58</sup> N. Gavey, “Fighting Rape” in Haberle, Renée J., and Victoria Grace, eds. *Theorizing Sexual Violence*. New York: Routledge, 2009, p.97.

<sup>59</sup> Ibid, p.97

<sup>60</sup> Ibid, p.111.

For instance, Indigenous women are more likely to be exposed to rape, harassment and human trafficking not only because they are women, but also because they are Indigenous, they tend to be poorer and they are exposed to harsher social and economic conditions.<sup>61</sup> Therefore, in the Canadian setting, making such a distinction, is important for the development of sustainable policies targeting sexual violence against Indigenous women.

#### RACIALIZED SEXUAL VIOLENCE AND INDIGENOUS WOMEN IN CANADA

Indigenous women in Canada, and around the world, have been subjected to a variety of gendered colonial practices that range from forced sterilization<sup>62</sup> to Residential Schools in Canada. Effects of colonial practices and post-colonial management policies will continue to have long-lasting effects in generations to come. Such a generational effect is relevant because demographic information shows that Indigenous populations are growing fast, but their life conditions are below those of average Canadians.

The last compulsory census reported that in 2006 indigenous women in Canada were 4% of the total female population in the country.<sup>63</sup> Nonetheless, the same census reported that the female Indigenous population was growing faster than any other female population in Canada;<sup>64</sup> thus, one can assume that this number has considerably increased in the past 7 years. Among all Indigenous women, Métis women were the fastest growing group not only due to births, but also because more women were reporting, for the first time, their Métis status.<sup>65</sup> Other factors that affect the status of Aboriginal women are the *Indian Act* and its related bills, which delineates every-so often who has the right to claim “Indian” status.<sup>66</sup> In the past 30 years, bills affecting Indigenous

---

<sup>61</sup> AFN, p. 2-3.

<sup>62</sup> Williams, L. “Forced Sterilization.” *Rabble.ca*. n.d. <http://rabble.ca/toolkit/rabblepedia/forced-sterilization>

<sup>63</sup> Vivian O’Donnell and Susan Wallace, “First Nations, Métis and Inuit Women,” *Statistics Canada*, last updated on May 2013, <http://www.statcan.gc.ca/pub/89-503-x/2010001/article/11442-eng.htm>

<sup>64</sup> *Ibid*, n.p.

<sup>65</sup> *Ibid*, n.p.

<sup>66</sup> “Indian Act,” *Justice Laws Website*, last modified November 22, 2013, <http://laws.justice.gc.ca/eng/acts/I-5/>

women's legal right to define themselves as Indigenous and their status have been broadly discussed.<sup>67</sup>

The rise of the Indigenous population in Canada as a whole, will most likely become an issue of development since, as Escobar points out, a big concern for the West is the overpopulation of poor countries or communities.<sup>68</sup> Indigenous women are younger in average than their non-Indigenous counterparts and only 5% of indigenous women in Canada are seniors.<sup>69</sup> Yet, life expectancy is between 5 and 11 years lower than that of non-indigenous women.<sup>70</sup> Vivian O'Donnell and Susan Wallace point out that different socioeconomic factors affect these women's lower life expectancies.<sup>71</sup> Some of these include high unemployment rates (14% unemployment rate as a whole and 20% for young women<sup>72</sup>), unplanned pregnancies (1 in ten indigenous girls aged 15 to 19<sup>73</sup>), inadequate housing (28% live in housing that requires major repairs<sup>74</sup>), income inequality,<sup>75</sup> lower levels of education,<sup>76</sup> domestic violence and discrimination.

Indigenous women in Canada also face numerous barriers, but some of the most important ones are their relationship with the state and mainstream society. In quoting Chandra Mohanty, Escobar indicates that Third World women, or in this case Indigenous women, are thought of as oppressed and lacking agency.<sup>77</sup> Hence, they are implicitly compared to their Caucasian counterparts, which are deemed as the standard of Western, modern and liberal womanhood.<sup>78</sup>

---

<sup>67</sup> O'Donnell and Wallace, n.p.

<sup>68</sup> Escobar, 35.

<sup>69</sup> As per the 2006 census. O'Donnell and Wallace, n.p.

<sup>70</sup> Ibid, n.p.

<sup>71</sup> Ibid, n.p.

<sup>72</sup> Ibid, n.p.

<sup>73</sup> Ibid, n.p.

<sup>74</sup> Ibid, n.p.

<sup>75</sup> Indigenous women make less than their non-indigenous counterparts and less than indigenous men. Ibid, n.p.

<sup>76</sup> 35% of indigenous women 25 and over have less than high school education. Ibid, n.p.

<sup>77</sup> Escobar, 8.

<sup>78</sup> Ibid.

This comparison, Mohanty argues, is in itself a reproduction of the colonization discourse because it asserts the superiority of one over the other.<sup>79</sup> Paternalistic approaches to the development of Indigenous women are driven by government policy and colonial documents like the *Indian Act*.<sup>80</sup>

The situation of Indigenous women in Canada has risen from a managerial problem to a development one. The most publicized case of discrimination against Indigenous women has been the disappearance of more than 500 indigenous women on the past 30 years. Despite the government's intervention in much of Indigenous women's lives, the disappearances and systemic violence against them have not been addressed. In 2011, Amnesty International called the Canadian government to act in accordance to its duties to protect its population and its International commitment to Human Rights by devoting effort and resources to find the missing women and to create legislation to protect Indigenous women.<sup>81</sup> Today, many of the disappearances remain unsolved and the chances of Indigenous women experiencing violence continue to rise, particularly sexual violence.

Indigenous women in Canada share similar experiences to Indigenous women in the United States in terms of sexual violence. Amnesty International reports that a large number of Indigenous women suffer violence at the hands of non-Indigenous men.<sup>82</sup> Similarly, they experience additional levels of violence within rape experiences.<sup>83</sup> In Canada, the much publicized case of Judge Ramsay, who in 2004 pleaded guilty to sexual assault, breach of trust and obtaining sexual services

---

<sup>79</sup> Ibid.

<sup>80</sup> Daniel Wilson and David Macdonald, "The Income Gap Between Aboriginal Peoples and the Rest of Canada," *Canadian Centre for Policy Alternatives*, last modified April 2010, [http://www.google.ca/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&ved=0CD4QFjAC&url=http%3A%2F%2Fwww.policyalternatives.ca%2Fsites%2Fdefault%2Ffiles%2Fuploads%2Fpublications%2Freports%2Fdocs%2FAboriginal%2520Income%2520Gap.pdf&ei=K5ybUsH4AoXtoATQmoGwBA&usg=AFQjCNG4KXcNRomPsfPr\\_Yy3vYPnmfWc\\_w&sig2=fkMcfTUS0h8MFe6LIXC0eg&bvm=bv.57155469,d.cGU](http://www.google.ca/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&ved=0CD4QFjAC&url=http%3A%2F%2Fwww.policyalternatives.ca%2Fsites%2Fdefault%2Ffiles%2Fuploads%2Fpublications%2Freports%2Fdocs%2FAboriginal%2520Income%2520Gap.pdf&ei=K5ybUsH4AoXtoATQmoGwBA&usg=AFQjCNG4KXcNRomPsfPr_Yy3vYPnmfWc_w&sig2=fkMcfTUS0h8MFe6LIXC0eg&bvm=bv.57155469,d.cGU)

<sup>81</sup> "No More Stolen Sisters," *Amnesty International*, last updated on 2013, <http://www.amnesty.ca/our-work/issues/indigenous-peoples/no-more-stolen-sisters>

<sup>82</sup> Amnesty International, "Maze of Injustice," 2006. NY: New York, p.4.

<sup>83</sup> Ibid, 5.

from a minor, continues to be used as an example of high-level interracial sexual violence.<sup>84</sup> Judge Ramsay was reported by Indigenous girls (ages 12 and 17), who were hired for sex, but who experienced violence, rape and abuse. Although the case was fortunately addressed, Ramsay's case showed evidence of involvement by RCMP officers, lawyers and judges in prostitution, rape and abuse of Indigenous women and girls, which has never been investigated or prosecuted.<sup>85</sup>

Those experiences of violence demonstrate that policies addressing sexual violence against Indigenous women should address gender-based violence, racism, discrimination and the precarious life conditions under which many Indigenous women live. Organizations like Amnesty International argue that human rights approaches can provide gains for Indigenous women and enhance their life conditions.<sup>86</sup> The question arises, how can rights approaches change the experience of Indigenous women, which has remained largely untouched in the past 30 years?

#### HUMAN RIGHTS APPROACHES AND NATIONAL ACTION PLANS

Human rights remain largely unquestioned in academic circles perhaps because we conceive rights as a moral and ethical need that should be protected by the state. Human rights are so relevant in today's ethical rhetoric that International Law heavily relies on the assumption that human rights are universal and implementable. This is not to say that human rights are not valuable. On the contrary, human rights, if implemented, endorsed and protected, could considerably change experiences of violence.

Nonetheless, it is important to wonder about the usefulness of those approaches in designing policy on the ground. Several years of human rights discourses, declarations and ratifications have revealed the difficulty of translating principles into policy and implementation.

---

<sup>84</sup> Human Rights Watch, p.31.

<sup>85</sup> Ibid, 32-33.

<sup>86</sup> Maze of Injustice, p. 25.

As mentioned before, 32 years after the ratification of CEDAW, 31 years after the creation of the *Charter of Rights and Freedoms* and 20 years after the *Beijing Action Platform*, Indigenous women continue to go missing, to experience sexual violence and to be neglected by the state. Thus, something else is needed.

National Action Plans on violence against women aim to translate rights into policy. In following UN guidelines, the CNWSTH recognizes violence against women as a human rights violation.<sup>87</sup> The National Action Plan is not finalized, and recommendations have been limited to the consultation process for the creation of the plan, the elements it must include and the importance of the human rights approach.<sup>88</sup> Nevertheless, a vital component is the actual capacity to exercise one's rights. Amartya Sen speaks of development "as a process of expanding the real freedoms that people enjoy."<sup>89</sup> Sen's approach has been central to human rights advocacy, but something that is often left out is the importance of *capabilities*. For Sen, freedom and human rights entail the capability to do or avoid something.<sup>90</sup> This is essential because one cannot be said to have the right to food if one does not have the means (i.e. employment, access to land) to feed one self.

Similarly, National Action Plans, as policy pieces, should not only recognize drivers, but they should acknowledge tools and processes available to the population of interest. AFN appropriately explains that ending sexual violence against Indigenous women is not a linear process. It requires addressing systemic inequalities, poverty, trafficking and discrimination<sup>91</sup> for Indigenous women to be able to develop capabilities. Since human rights are not strictly binding,

---

<sup>87</sup> CNWSTH, p. 8.

<sup>88</sup> Ibid, 39-40.

<sup>89</sup> Amartya Sen, *Development As Freedom*, (Oxford, Oxford University Press, 1999, p.36.

<sup>90</sup> Ibid.

<sup>91</sup> AFN, 3-4.

in that Canada will not face penalties for not addressing the situation of Indigenous communities, it is necessary to develop a framework where Indigenous communities can lead change towards the experience of Indigenous women.

## RECOMMENDATIONS

This paper has showed skepticism towards the human rights approaches embedded in the recommended National Action Plan. This is not because human rights are not important. Yet, years of experience have demonstrated that while Indigenous communities should continue to participate in the International and national spheres, they should also become the main driver of change. Addressing sexual violence against Indigenous women will entail the following:

**Creating Capacity:** Working within Sen's framework and Indigenous perspectives, Indigenous communities should transcend advocacy and start creating capabilities where possible. For instance, self-governance provides an opportunity for Indigenous communities to provide women with opportunities to engage in governance and community decision-making. It also offers Indigenous peoples with a chance to redefine what is needed to guarantee women's advancement in their communities. Particularly relevant to the issue of sexual violence is the capacity to avoid or leave potentially dangerous situations. Developing capabilities among Indigenous women will require support options (shelters and the alike), community support, access to education and employment opportunities. Without this safety net, it cannot be said that Indigenous women are truly able to enjoy their right to equality.

**Accountability:** Indigenous communities should hold the government accountable for failures in law enforcement. While this has been an arduous process, engagement with the UN and with Canadians at large can prove an effective tool in demanding accountability. Accountability is also relevant in the political sphere, where parties seek to be re-elected, this provides another outlet for Indigenous communities to lobby. Nonetheless, accountability should be a core principle in

Indigenous communities. Perpetrators and accomplices should be held accountable for violence against Indigenous women, and crimes should be treated as such by the communities.

**Social Policy:** Social policy is a very broad term and it includes numerous areas. Social policy in Canada has been led primarily by government agencies and some NGOs. However, much of the problems faced by Indigenous women are of social nature (education, employment, and housing). Indigenous communities should seek to develop social policies beyond those prescribed by the government. Indigenous-based social policy should ask, what would a particular policy look like if designed and implemented from an Indigenous perspective? Such an approach will enable Indigenous communities to be policy innovators, to utilize their frameworks and approaches and to develop sustainable communities while creating capacity.

#### CONCLUSION

This paper has provided an overview of the experience of Indigenous women in regards to sexual violence. The prevalence of the phenomenon has attracted the attention of NGOs and the United Nations. Yet, Canada has been unable to come up with adequate policies targeting sexual violence against Indigenous women. Current attempts by the Canadian Network of Women's Shelters and Transition Houses to develop a National Action Plan utilize human rights approaches to the issue of violence. Nonetheless, years of little change in the condition of Indigenous women despite Canada's commitments to human rights indicates that something else is needed.

The Assembly of First Nations has suggested a National Action Plan on Violence against Indigenous Women, and establishes community efforts as essential to addressing the issue. This paper has demonstrated that human rights approaches should seek more tangible means to materialize rights into policy. Thus, Amartya Sen's notion of capabilities provides a useful background in exploring how rights should be conceived. Following Sen's argument, this paper has provided three key recommendations, the most important being that Indigenous communities

should reach out beyond advocacy to start rethinking policy and designing social policies from Indigenous perspectives.

E. Cervantes-Altamirano

## References

- “A History of Residential Schools in Canada.” *CBC News*. Last modified June 14, 2010, <http://www.cbc.ca/news/canada/a-history-of-residential-schools-in-canada-1.702280>
- “Aboriginal Issues.” *Centre for Social Justice*. Last updated in 2013, <http://www.socialjustice.org/index.php?page=aboriginal-issues>
- Assembly of First Nations. (2013). “A National Action Plan to End Violence Against Indigenous Women and Girls.”
- Blanchfield, M. (2013, September 19). Canada Rejects UN Call for Review of Violence Against Aboriginal Women. *Globe and Mail*. Retrieved from <http://www.theglobeandmail.com/news/national/canada-to-reject-un-panels-call-for-review-of-violence-on-aboriginal-women/article14406434/>
- Bumiller, Kristin. 2008. *In An Abusive State: How Neoliberalism Appropriated the Feminist Movement Against Sexual Violence*. Durham and London: Duke University Press.
- Canadian Network of Women’s Shelters and Transition Houses. (2013). “The Case for a National Plan on Violence Against Women.”
- “Canada Overview.” *The World Bank*. Last modified June 4 of 2013, <http://www.worldbank.org/en/country/canada/overview>
- Escobar, A. *Encountering Development*. Princeton: Princeton University Press. 1995.
- “Freedom in the World, Canada.” *Freedom House*. Last modified 2013, <http://www.freedomhouse.org/report/freedom-world/2013/canada>
- Haberle, Renée J., and Victoria Grace, ed. 2009. *Theorizing Sexual Violence*. New York: Routledge.
- “Healthy Babies and Children.” *Native Women’s Association of Canada*. Last updated 2013 <http://www.nwac.ca/programs/healthy-babies-children>

Hodgson, James F., and Debra S. Kelley, ed. 2012. *Sexual Violence: Policies, Practices, and Challenges in the United States and Canada*. Westport, Connecticut London: Praeger.

House of Commons, "Invisible Women: a Call to Action," (2014). Retrieved from

<http://www.parl.gc.ca/content/hoc/Committee/412/IWFA/Reports/RP6469851/IWFArp01/IWFArp01-e.pdf>

"Human Development Index." *United Nations Development Programme*. Last modified 2013

<http://hdrstats.undp.org/en/countries/profiles/CAN.html>

Human Rights Council. (2009). *Summary Prepared by the Office of the High Commissioner for Human Rights in Accordance with Paragraph 15 (c) of the Annex to Human Rights Council Resolution 5/1 Canada*. (Working Groups on the Universal Periodic Review). Retrieved from

[http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/CA/A\\_HRC\\_WG6\\_4\\_CAN\\_3\\_E.PDF](http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/CA/A_HRC_WG6_4_CAN_3_E.PDF)

Human Rights Council. (2013). *Draft Report of the Working Group on the Universal Periodic Review. Canada*. Geneva. Retrieved from <http://www.upr->

[info.org/IMG/pdf/a\\_hrc\\_wg.6\\_16\\_1.9\\_canada.pdf](http://www.upr-info.org/IMG/pdf/a_hrc_wg.6_16_1.9_canada.pdf)

Human Rights Council Adoption of the Outcome of Canada's Second cycle Universal Periodic Review. Canada's Statement. (2013). Retrieved from <http://www.upr->

[info.org/IMG/pdf/canada\\_plenary\\_statement\\_2013\\_e.pdf](http://www.upr-info.org/IMG/pdf/canada_plenary_statement_2013_e.pdf)

"Indian Act." *Justice Laws Website*. Last modified November 22, 2013,

<http://laws.justice.gc.ca/eng/acts/I-5/>

"Indian Status." *Aboriginal Affairs and Northern Development Canada*. Last updated on May

2013, <http://www.aadnc-aandc.gc.ca/eng/1100100032374/1100100032378>

"It's in Our Hands: Stop Violence against Women." 2004. New York: Amnesty International.

IWRAW. (n.d.). *List of Signatory and/or States Parties*. Retrieved from [http://www.iwraw-ap.org/protocol/list\\_signatories.htm](http://www.iwraw-ap.org/protocol/list_signatories.htm)

National Report Submitted in Accordance with Paragraph 15 (A) of the Annex to Human Rights

Council Resolution 5/1 Canada. (2009, February). United Nations. Retrieved from

[http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/CA/A\\_HRC\\_WG6\\_4\\_CAN\\_1\\_E.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/CA/A_HRC_WG6_4_CAN_1_E.pdf)

“No More Stolen Sisters.” *Amnesty International*. Last updated on 2013,

<http://www.amnesty.ca/our-work/issues/indigenous-peoples/no-more-stolen-sisters>

NWAC. (2011). *Fact Sheet: Violence against Aboriginal Women* (p. 5). Retrieved from

[http://www.nwac.ca/files/download/NWAC\\_3E\\_Toolkit\\_e\\_0.pdf](http://www.nwac.ca/files/download/NWAC_3E_Toolkit_e_0.pdf)

O’Donell, V. and Wallace, S. “First Nations, Métis and Inuit Women.” *Statistics Canada*. Last

updated on May 2013, <http://www.statcan.gc.ca/pub/89-503-x/2010001/article/11442-eng.htm>

“Prime Minister Harper offers full apology on behalf of Canadians for the Indian Residential

School System.” *Aboriginal Affairs and Northern Development*. Last updated on September

2010, <http://www.aadnc-aandc.gc.ca/eng/1100100015644/1100100015649>

Rhoad, M., & Human Rights Watch (Organization). (2013). *Those who take us away: abusive*

*policing and failures in protection of indigenous women and girls in Northern British Columbia,*

*Canada*. [New York, N.Y.]: Human Rights Watch.

Sen, A. *Development As Freedom*. Oxford, Oxford University Press. 1999.

Standing Committee on the Status of Women. (2011). *Interim Report Call Into the Night: An*

*Overview of the Violence Against Aboriginal Women*. (Committee Report No. 14). Retrieved

from

<http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=5056509&Language=E&Mode=1&Parl=40&Ses=3>

Sweetman, Caroline, ed. 1998. *Violence Against Women*. Oxfam Focus on Gender. Oxford: Oxfam.

The Confederacy of Mainland Mi'kmaq. "The Challenge of Identity: Addressing the complex question of Mi'kmaw citizenship," in *Kekina'muek: Learning about the Mi'kmaq in Nova Scotia*.

Last updated in 2007, <http://www.cmmns.com/Kekinamuek.php>

UN Women. (2010.) *About us*. Retrieved from

<http://www.un.org/womenwatch/daw/daw/index.html>

UN Women. (n.d.). *Convention on the Elimination of All Forms of Discrimination against*

*Women (CEDAW)*. Retrieved from <http://www.un.org/womenwatch/daw/cedaw/>

UN Women. (n.d.). *General Recommendations made by the Committee on the Elimination of*

*Discrimination against Women*. Retrieved from

<http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>

Wilson, D. and Macdonald, D. "The Income Gap Between Aboriginal Peoples and the Rest of

Canada." *Canadian Centre for Policy Alternatives*. Last modified April 2010,

[http://www.google.ca/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&ved=0CD4QFjAC&url=http%3A%2F%2Fwww.policyalternatives.ca%2Fsites%2Fdefault%2Ffiles%2Fuploads%2Fpublications%2Freports%2Fdocs%2FAboriginal%2520Income%2520Gap.pdf&ei=K5ybUsH4AoXtoATQmoGwBA&usg=AFQjCNG4KXcNRomPsfPr\\_Yy3vYPnmfWc\\_w&sig2=fkMcfTUS0h8MFe6LIXC0eg&bvm=bv.57155469,d.cGU](http://www.google.ca/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&ved=0CD4QFjAC&url=http%3A%2F%2Fwww.policyalternatives.ca%2Fsites%2Fdefault%2Ffiles%2Fuploads%2Fpublications%2Freports%2Fdocs%2FAboriginal%2520Income%2520Gap.pdf&ei=K5ybUsH4AoXtoATQmoGwBA&usg=AFQjCNG4KXcNRomPsfPr_Yy3vYPnmfWc_w&sig2=fkMcfTUS0h8MFe6LIXC0eg&bvm=bv.57155469,d.cGU)